



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[EPA-HQ-SFUND-2011-0965; FRL- 9635-9]

Designation of Hazardous Substances; Designation, Reportable Quantities, and Notification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to reinstate the maximum observed constituent concentrations for several listed hazardous wastes that were inadvertently removed from the regulations by a November 8, 2000 final rule.

DATES: This rule is effective on **[Insert date 60 days from date of publication in the Federal Register]** without further notice, unless EPA receives adverse comment by **[Insert date 30 days from date of publication in the Federal Register]**. If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No.

EPA-HQ-SFUND-2011-0965, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: superfund.docket@epa.gov
- Fax: 202-566-9744
- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Superfund Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
- Hand Delivery: EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460. Attention Docket ID No.

EPA-HQ-SFUND-2011-0965. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-HQ-SFUND-2011-0965**. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be

publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the **EPA-HQ-SFUND-2011-0965** docket. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Superfund Docket telephone number is (202) 566-0276. EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412-9810 or TDD (703) 412-3323. For more detailed information on specific aspects of this direct final rule, contact Lynn Beasley at (202) 564-1965 (beasley.lynn@epa.gov), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002, Mail Code 5104A

SUPPLEMENTARY INFORMATION:

I. Why is EPA Using a Direct Final Rule?

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. This action merely reinstates the maximum observed constituent concentrations for several listed hazardous wastes that were inadvertently removed from regulations by a November 8, 2000 final rule. However, in the “Proposed Rules” section of today’s Federal Register, we are also publishing a separate proposed rule to reinstate these same maximum observed constituent concentrations for several listed hazardous wastes that were inadvertently removed from the regulations if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about

commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that this direct final rule will not take effect until EPA addresses all public comments in any subsequent final rule based on the proposed rule.

II. Does This Action Apply to Me?

Type of Entity	Examples of Affected Entities
Federal Agencies	National Response Center and any Federal agency that may release or respond to releases of hazardous substances.
State and Local Governments	State Emergency Response Commissions, and Local Emergency Planning Committees.
Responsible Parties	Those entities responsible for the release of a hazardous substance from a vessel or facility. Those entities with an interest in the substances that were inadvertently removed from the table of maximum observed constituent concentrations for listed hazardous wastes K169, K170, K171, and K172 in 40 CFR 302.6(b)(1)(iii).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. What Should I Consider as I Prepare My Comments for EPA?

A. Submitting CBI.

Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify

electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2.

B. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

IV. What Does This Amendment Do?

This direct final rule reinstates the maximum observed constituent concentrations for listed hazardous wastes K169, K170, K171, and K172 to the table found in 40 CFR 302.6(b)(1)(iii). A

November 8, 2000 final rule (Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities; Final Rule) inadvertently removed the maximum observed constituent concentrations for those listed hazardous wastes from the table in that section when it was amended to include the maximum observed constituent concentrations for listed hazardous wastes K174 and K175. (*See* 65 FR 67132.) The maximum observed constituent concentrations were included in the 40 CFR 302.6 regulations to allow generators, transporters, and disposal facilities handling these hazardous wastes to calculate reportable quantities (RQs) using the mixture rule¹ developed in connection with the Clean Water Act section 311 regulations. The listed hazardous wastes K169, K170, K171, and K172 and their respective RQs are included in Table 302.4 - List of Hazardous Substances and Reportable Quantities and Appendix A to section 302.4 – Sequential CAS Registry Number List of CERCLA Hazardous Substances of Title 40 of the Code of Federal Regulations. However, the aforementioned Table 302.4 and Appendix A do not contain the maximum observed constituent concentrations. Section 302.6 is the only source of these maximum observed constituent concentrations contained in 40 CFR 302 – Designation, Reportable Quantities, and Notification.

V. How Were the Maximum Observed Constituent Concentrations Inadvertently Removed?

The inadvertent removal of the maximum observed constituent concentrations for K169, K170, K171, and K172 from §302.6 was the result of a formatting error. On November 8, 2000,

¹ 44 FR 50767, Aug. 29, 1979, Final Rulemaking; Water Programs; Determination of Reportable Quantities for Hazardous Substances; and 50 FR 13463, Apr. 4, 1985, Final rule; Notification Requirements; Reportable Quantity Adjustments. Discharges of mixtures and solutions are subject to these regulations only where a component hazardous substance of the mixture or solution is discharged in a quantity equal to or greater than its reportable quantity.

EPA issued a final rule (65 FR 67132) in the Federal Register that amended 40 CFR 302.6(b)(1)(iii) by adding entries K174 and K175 to an existing table of maximum observed constituent concentrations for listed hazardous wastes K169, K170, K171, and K172. The Federal Register final rule did not contain the proper signal (5 asterisks) to the Office of the Federal Register that would cause the addition of entries K174 and K175 to the existing table and instead replaced the existing table with a table that only included entries for K174 and K175. The missing signal (5 asterisks) was a formatting error. The proper signal (5 asterisks) was contained in the proposed rule that was published on August 25, 1999. (*See* 64 FR 46539.)

On November 14, 2011, Artisan EHS Consulting, LLC (Artisan EHS) submitted a request for correction of information under the Data Quality Act (also known as the Information Quality Act),² as implemented through the Office of Management and Budget³ and the EPA.^{4,5} EPA confirmed the accuracy of the Artisan EHS' request which led to this direct final rule.⁶

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

² Section 5(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001, P.L. 106-554; 44 U.S.C. § 3516 (notes).

³ Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 FR 8452 (Feb. 22, 2002).

⁴ Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity, of Information Disseminated by the Environmental Protection Agency, EPA/260R-02-008 (October 2002).

⁵ The letter from Artisan EHS can be found in the docket for this final rule, EPA-HQ-SFUND-2011-0965.

⁶ In their letter, Artisan EHS also pointed out a typographical error—that is, at the end of 40 CFR 302.6 there is an erroneous reference--‘65 FR 87132, Nov. 8, 2001’ should read ‘65 FR 67132, Nov. 8, 2000. Typographical errors are corrected by the Office of the Federal Register. On November 23, 2011, EPA requested that the Office of Federal Register change the reference accordingly—that change was made and is available to view at: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/index.tpl>; follow the links to 40 CFR 302.6.

B. Paperwork Reduction Act

This direct final action does not impose any new information collection burden. The amendments in this direct final rule simply reinstates the maximum observed constituent concentrations for several listed hazardous wastes that were inadvertently removed from the regulations when they were amended to include the maximum observed constituent concentrations for other newly listed hazardous wastes in a November 8, 2000 final rule. This direct final rule does not change any reporting requirements in the general provisions. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing subparts of 40 CFR 302 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050-0046. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. Subparts that will be added through separate rulemakings will document the respective information collection requirements in their own ICR documents.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is

any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The direct final rule simply reinstates the maximum observed constituent concentrations for several listed hazardous wastes that were inadvertently removed from the regulations when they were amended to include the maximum observed constituent concentrations for other newly listed hazardous wastes in a November 8, 2000 final rule. The direct final rule does not itself add any additional subparts or requirements. The direct final rule will not impose any new requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action contains no Federal mandates under the provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The amendments in this direct final rule reinstate the maximum observed constituent concentrations for several listed hazardous wastes that were inadvertently removed from the regulations when they were amended to include the maximum observed constituent concentrations for other newly listed hazardous wastes in a November 8, 2000 final rule.

E. Executive Order 13132: Federalism

Executive Order (EO) 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.” “Policies that have Federalism implications” is defined in the EO to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This direct final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132.

This amendment applies directly to responsible parties. They do not apply to governmental entities unless the government entity releases any of the listed hazardous wastes. This regulation also does not limit the power of States or localities to the responsible parties. Thus, EO 13132 does not apply to this direct final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The changes in this direct final rule do not result in any changes to the requirements of 40 CFR 302.6. Thus Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This direct final rule is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the

environmental health or safety risks addressed by this action present a disproportionate risk to children. The changes in this direct final rule do not result in any changes to the requirements in 40 CFR 302.6.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12(d)(15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or

environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that the direct final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the amendments do not affect the level of protection provided to human health or the environment.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: February 14, 2012.

Mathy Stanislaus,

Assistant Administrator

Office of Solid Waste and Emergency Response

For the reasons set out, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 302 – DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

2. In §302.6, paragraph (b)(1)(iii), the table is amended by adding entries K169, K170, K171, and K172 in numerical order to read as follows:

§302.6 Notification requirements.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

Waste	Constituent	Max ppm
K169	Benzene	220.0
K170	Benzene	1.2
	Benzo (a) pyrene	230.0
	Dibenz (a,h) anthracene	49.0
	Benzo (a) anthracene	390.0
	Benzo (b) fluoranthene	110.0
	Benzo (k) fluoranthene	110.0
	3-Methylcholanthrene	27.0
	7, 12-Dimethylbenz (a) anthracene	1,200.0
K171	Benzene	500.0

K172	Arsenic	1,600.0
	Benzene	100.0
	Arsenic	730.0
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